IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 14124 of 2003

Between:

1 The Methodist Co-operative Housing Society Ltd.(Regd.No.TA-69),
Begumpet, Hyderabad, rep. by its President.
2 G.Chandra Mohan S/o.Sri Prakasam
R/o.3-6-195/A, Street No.17,
Himayatnagar, Hyderabad.

..... PETITIONERS

AND

1 The District Collector(Cooperation) Hyderabad.
2 The Registrar of Cooperative Societies Andhdra Pradesh, Hyderabad.
3 The Divisional Cooperatie Officer, Secunderabad Division,

M.J.Road, Nampally, Hyderabad.
4 K.Nathanial. S/o.K.V.Gideon
R/o.H.No.10-26/27A, R.T.C.Colony, Ramanthapur,
Hyderabad.
5 Ch.Wesle Abraham S/o.Abraham,
54-15-2, Ring Raod, Vijayawada.
6 Ch.Ramakrishnaiah S/o.not Known
H.No.10-26/27A, R.T.C.Colony
Ramanthapur, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Mandamus declaring the action of the 3rd respondent in appointing Respondents 4 to 6 as Person-in-Charge Committee of the 1st Petitioner society under Section 32

(7) (a) of the Andhra Pradesh Cooperative Societies Act, 1964 in Rc.No.3858/02-Hsg dated 21.3.2003 as being illegal, without authority of law and without jurisdiction and consequentially set aside the said order.

Counsel for the Petitioner: MR.B.ADINARAYANA RAO

Counsel for the Respondents 1 to 3: GP FOR COOPERATION

Counsel for the Respondents 4 to 6: MR.B.VIJAYSEN REDDY

The Court made the following:

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ORDER:

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This writ petition is filed to declare the action of the third respondent in appointing respondents 4 to 6 as Person-in-charge Committee of the first petitioner-society under Section 32 (7) (a) of the Andhra Pradesh Cooperative Societies Act, 1964 by proceedings in Rc.No.3858/02-Hsg, dated 21-03-2003 as illegal and without authority of law.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The first petitioner herein is a Society registered under the Andhra Pradesh Cooperative Societies Act, 1964 (for short 'the Act'). The elections for electing the Managing Committee of the first petitioner-society were held on 22-06-1997 and the third respondent was elected as President and the term of Committee is three years. On expiry of the term of the Committee, the elected Managing Committee was appointed as Person-in-charge Committee by the third respondent, extending the term of the Committee till 21-12-2002.

Before the expiry of the tenure of the said Committee, the Person-in-charge Committee resolved to conduct the elections to the Managing Committee and a Committee meeting was also held on 21-09-2002 and a retired Cooperative Registrar was appointed as election officer to conduct the elections of the society. The election officer issued a detailed election programme and conducted the elections of the society on 27-11-2002 and a copy of the office bearers elected was forwarded to respondents 1

to 3. In the said elections, the second petitioner herein was elected as President of the first petitioner-society. The elected Managing Committee assumed office on 27-11-2002 and the same was also informed to respondents 1 to 3.

The fourth respondent herein, who is the Ex-president of the society, did not handover the records of the society to it and further he committed grave and serious irregularities while managing the affairs of the society. As the irregularities would be exposed of if the records were handed over, the fourth respondent did not hand over the records to the first petitioner-society. While so, the second petitioner made a representation to the second respondent seeking to initiate action against the fourth respondent. The second respondent, being satisfied that the fourth respondent committed irregularities, had ordered an enquiry under Section 51 of the Act. The fourth respondent with a view to stall the enquiry and escape the liability of handing over the records to the newly elected Managing Committee, approached the third respondent and at his request the third respondent
by proceedings in Rc.No.3858/02-Hsg, dated 21-03-2003 appointed the respondents 4 to 6 as the Person-in-charge Committee for a period of six months, as if there is no committee and the term of the committee had expired.
It is within the knowledge of the third respondent that serious irregularities were alleged against the fourth respondent and a statutory enquiry under Section 51 of the Act was also pending. It is further stated that respondents 5 and 6 are
not the members of the society, who were appointed as
members of the Person-in-charge Committee. Therefore, the appointment of respondents 4 to 6 as Person-in-charge Committee is illegal and arbitrary and therefore the petitioners pray to set aside the same.

A detailed counter affidavit has been filed by the fourth respondent stating that the second petitioner has no *locus standi* to represent the first petitioner-society as he is not
its President. The election held on 27-11-2002 was not conducted in accordance with the byelaws of the society under the provisions of the Act. In the report called for by the Commissioner for Cooperation and Registrar of Cooperative Societies, the third respondent held that the election conducted on 27-11-2002 is not as per the Rules. The Election Officer has not intimated to the Chairman or any other members about the elections to be held on 27-11-2002. But, it is true that an enquiry under Section 51 of the Act is pending against the fourth respondent. The Society and the

second petitioner and his henchmen are all aware of the appointment of the fourth respondent as Chairman of the Public-in-charge Committee and extension order issued by the third respondent vide proceedings dated 21-03-2003, which is in accordance with the provisions of the Act and also after consideration of the interest of the Society, and therefore the respondents pray to dismiss the writ petition.

The learned counsel appearing for the petitioners contended that the appointment of respondents 4 to 6 as Person-in-charge Committee of the Society is arbitrary and bias, because though the fourth respondent was appointed as Chairman of the Person-in-charge Committee for a period of six months till the elections for the Managing Committee assuming in charge, but an enquiry is ordered against him under Section 51 of the Act for the financial irregularities committed by him in the society, and therefore in all fairness fourth respondent could not have been appointed as Chairman of the Person-in-charge Committee. He further contended that since respondents 5 and 6 are not the members of the Society, their appointment as members of the Person-in-charge Committee should not be dealt with by the competent authority, and therefore in all fairness the third respondent ought to have appointed any one of the members of the society as members of the Person-in-charge Committee and therefore he prays to set aside the same.

None appears for the respondents 4 to 6.

It is fairly conceded by the respondents 1 to 3 that an enquiry under Section 51 of the Act is pending against
the fourth respondent. It is also conceded that respondents
5 and 6 are not the members of the first petitioner-society.

The challenge made by the Society is with regard to
the appointment of respondents 4 to 6 as Person-in-charge Committee by proceedings dated 21-03-2003, which reads as follows:

> "Whereas it has been brought to the notice of the Divisional Co-operative Officer, Secunderabad Division, that the term of the Elected Committee/Person-in-charge Committee of the Methodist Co-op. Housing Society Ltd., Hyderabad has expired.
>
> And whereas it is expedient to provide Management to the Society to manage the day to day affairs of the Society.
>
> I, the Divisional Co-operative Officer, Secunderabad Division by virtue of powers vested U/s.32 (7) (a) of the APCS Act 7 of 1964 hereby appoint the Person-in-charge Committee with the following Members for a period of (6) months with immediate

affect till Elections to the Managing Committee assume as charge which ever is earlier.

1. Sri K. Nathaniel - PIC Chairman

2. Sri Ch.Wesley Abraham - PIC Member

3. Sri Ch. Rama Krishnaiah - PIC Member

The Person-in-charge Committee appointed above shall work subject to the control of the Divisional
Co-operative Officer, Secunderabad under the instructions that will be given from time to time."

The Chairman of the Person-in-charge Committee, the fourth respondent herein, is no other than the Ex-president of the first petitioner-society. It is not disputed before this Court that the Commissioner for Cooperation and Registrar of Cooperative Societies in his Rc.No.47903/2002.H3, dated
27-12-2002 ordered enquiry under Section 51 of the Act for certain financial irregularities committed by the Ex-president of the first petitioner-society. Therefore, in all fairness, the third respondent ought not to have appointed the same person as Chairman of the Person-in-charge Committee of the first petitioner-society, because there may be any amount of bias in managing the first petitioner-society. It is an arbitrary exercise of the power by the third respondent in appointing the fourth respondent as Chairman of the Person-in-charge Committee to manage the affairs of the first petitioner-society in view of the fact that he is facing the charge of financial irregularities in respect of the same Society.

It is rightly contended by the learned counsel for the petitioners that the appointment of the fourth respondent as Chairman of the Person-in-charge Committee will cause prejudice to the members of the first petitioner-society.
The two other members have been appointed as Members of the Person-in-charge Committee by virtue of the proceedings dated 21-03-2003 and it is not disputed before this court that they are not the members of the first petitioner-Society.
Therefore, in not managing the first petitioner-society in proper way, there will be no disciplinary control over respondents 5 and 6, since they are not the members of the society.

In all fairness, any one of the members of the first petitioner-society ought to

have been appointed as members of the Person-in-charge Committee so that the third respondent will be having control over the society in case the members are not discharging their duties properly. Hence, the proceedings dated 21-03-2003 are liable to be quashed.

For the aforesaid reasons, the impugned proceedings dated 21-03-2003 are quashed. The third respondent can appoint any one of the members of the Society as Chairman of the Person-in-charge Committee and as well as the two members of the Society, for effective control and management of the Society.

Accordingly, the writ petition is allowed. No order as to costs.

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JUSTICE K.C.BHANU

Date: 08-07-2005.

YCR

To

1 The District Collector (Cooperation) Hyderabad.
2 The Registrar of Cooperative Societies, Andhdra Pradesh, Hyderabad.
3 The Divisional Cooperative Officer, Secunderabad Division, M.J.Road, Nampally, Hyderabad.
4. 2 CCs to G.P. for Cooperation, High Court of A.P.

Buildings, Hyderabad (OUT)

5. 2 C.D. copies.